

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Broadcast Entertainment Corporation)	
)	
Former Licensee of:)	File Numbers: EB-07-DV-056
KICA(AM))	EB-07-DV-057
Clovis, New Mexico)	
Facility ID # 61577)	NAL/Acct. No.: 200732800005
)	FRN: 0000012898
KKYC(FM))	
Clovis, New Mexico)	
Facility ID # 33402)	

FORFEITURE ORDER

Adopted: September 7, 2007**Released: September 11, 2007**

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to Broadcast Entertainment Corporation ("BEC"), former licensee of stations KICA(AM) and KKYC(FM) serving Clovis, New Mexico,¹ for willful and repeated violation of Section 73.3526 of the Commission's Rules ("Rules").² On June 18, 2007, the Enforcement Bureau's Denver Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of \$8,000 to BEC for failing to maintain a complete public inspection file for each station.³ In this *Order*, we consider BEC's arguments that the proposed forfeiture amount should be cancelled because BEC is no longer the licensee of KICA(AM) and KKYC(FM), and that BEC rectified the violation after the inspection by the Denver Office.

II. BACKGROUND

2. On January 10, 2007, an agent from the Enforcement Bureau's Denver Office conducted an inspection of KICA(AM) and KKYC(FM) at the station's main studio location of 1000 Sycamore Street, in Clovis, New Mexico, during normal business hours. The inspection revealed that the stations' public inspection files did not contain all of the required quarterly radio issues/programs lists for the entire license term. The current license term for each of the stations started on October 1, 2005.

3. BEC's General Manager and Sales Manager were present for the inspection. At the time the inspection was conducted, the agent observed the quarterly radio issues/programs list for the 2nd and

¹ On March 21, 2007, the Commission granted an application (File No. BAL-20070201BFW) to assign the KICA(AM) and KKYC(FM) licenses from Broadcast Entertainment Corporation to Tallgrass Broadcasting, LLC. The transaction was consummated on April 2, 2007.

² 47 C.F.R. § 73.3526.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732800005 (Enf. Bur., Western Region, Denver Office, released June 18, 2007).

3rd quarters of 2006 were missing from the KICA(AM) and KKYC(FM) public inspection files. The General and Sales Managers were unable to locate the missing items when the agent inquired about their location.

4. On June 18, 2007, the Denver Office issued a *NAL* in the amount of \$8,000 to BEC, finding that BEC apparently willfully and repeatedly failed to maintain complete public inspection files for KICA(AM) and KKYC(FM). BEC filed a response ("*Response*") on July 16, 2007, arguing that the proposed forfeiture amount should be cancelled because BEC is no longer the licensee of KICA(AM) and KKYC(FM), and that BEC rectified the violation after the inspection by the Denver Office.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*").⁶ In examining BEC's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷

6. Section 73.3526(a)(2) of the Rules requires that every licensee of an AM and FM station licensee shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraphs (e)(12) through (e)(14) of this section as well as paragraph (e)(16) of this section.⁸ Further, as required by Section 73.3526(b), the public inspection file shall be maintained at the station's main studio location.⁹

7. Section 73.3526(e)(12) of the Rules requires licensees to place in their public inspection file, for each calendar quarter, a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period.¹⁰ This list is known as the radio issues/programs list and copies of the lists must be maintained in the file until final action has been taken on the station's next renewal application. The public inspection files for KICA(AM) and KKYC(FM) were missing quarterly radio issues/program lists for multiple quarters during the license term, specifically the 2nd and 3rd quarters of 2006. BEC was aware of the requirement to have a complete public inspection file for KICA(AM) and KKYC(FM) given its response in the renewal applications, FCC Form 303-S, filed May 27, 2005.¹¹ In Section III, Question 3, for each station, BEC certified that the public inspection file had the proper documentation as required by 73.3526.

8. BEC does not dispute that the documents listed above were missing from the KICA(AM)

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ 47 C.F.R. § 73.3526(a)(2).

⁹ 47 C.F.R. § 73.3526(b).

¹⁰ 47 C.F.R. § 73.3526(e)(12).

¹¹ See BEC renewal applications for KICA (AM) and KKYC (FM), File Nos. BR-20050527AQG and BRH-20050527AQF, respectively. Both applications were granted on September 26, 2005.

and KKYC(FM) public inspection files at the time of the inspection. Instead, BEC argues that, consistent with precedent,¹² because BEC is no longer the licensee of KICA(AM) and KKYC(FM), the proposed forfeiture is moot and should be cancelled. We disagree. We note that the sale of a station, standing alone, is not a basis for cancelling a proposed forfeiture.¹³ We also find that none of the cases cited by BEC compels us to cancel the forfeiture proposed by the Denver Office. In *Flambo Broadcasting, Inc.*, (“*Flambo*”) and *Americom Las Vegas Ltd. Partnership* (“*Americom*”), while the Commission noted that *Flambo* and *Americom* no longer held the licenses that were the subject of the proposed forfeitures, the primary reason given for rescinding the proposed forfeitures was the significant amount of time (six years) that had elapsed between the issuance of the underlying Notices of Apparent Liability for Forfeiture, and the subsequent Memorandum Opinions and Orders. That is not an issue in this case as the instant *Order* is being issued less than three months after the issuance of the *NAL*. The amount of time between the issuance of the Notice of Apparent Liability for Forfeiture and the subsequent Memorandum Opinion and Order was also significant in the cancellation of the proposed forfeiture in *Grass Roots Broadcasting, LLC* (“*Grass Roots*”). In that case, over sixteen months had passed between the two actions and during that period of time the Enforcement Bureau found that the state business license for *Grass Roots* had been cancelled and that *Grass Roots* had no assets. While BEC states that it expects to be legally dissolved by the end of this year, it remains an ongoing concern as of the date of this *Order*.

9. In *Lighthouse Broadcasting* (“*Lighthouse*”), while the Enforcement Bureau noted that *Lighthouse* was no longer a Commission licensee, the Bureau specifically found that the payment of the proposed forfeiture would impose a financial hardship on *Lighthouse* and cancelled the proposed forfeiture. In the instant case, BEC has produced no evidence or financial documentation showing that payment of the forfeiture would impose a financial hardship on BEC. In *Madison Broadcasting Group, Inc.*, (“*Madison*”), the Enforcement Bureau cancelled a forfeiture against *Madison* after “reviewing the particular circumstances” of that case. Those circumstances included no evidence of repeated violations, questions regarding the willfulness of the violation, the dismantling of the antenna structures at issue, and an incomplete showing of an inability to pay, supported by the fact that the station operated by the licensee and antenna structure registrant was silent, with Commission permission, at the time the *NAL* was issued. In the instant case, no such extenuating circumstances exist. Considering the precedent offered by BEC, and the facts of the instant case, we find that the circumstances do not compel us to utilize the discretion authorized by Section 1.80(i) of the Rules¹⁴ and we, therefore, decline to cancel the proposed forfeiture.

10. BEC also argues that its failure to place the missing quarterly issues/programs lists in the public inspection file was a mistake due to a change in management and was rectified shortly after the inspection. The Commission has consistently held that a licensee is expected to correct errors when they are brought to the licensee’s attention and that such correction is not grounds for a downward adjustment in the forfeiture.¹⁵ Additionally, where lapses occur in maintaining the public inspection file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions

¹² BEC cites to *Grass Roots Broadcasting, LLC*, 19 FCC Rcd 4018 (EB 2004) (cancelling proposed \$20,000 forfeiture for tower and main studio violations); *Lighthouse Broadcasting*, 18 FCC Rcd 9573 (EB 2003) (cancelling proposed \$12,000 forfeiture for failure to maintain emergency alert system equipment and failure to discontinue operations at night); *Madison Broadcasting Group, Inc.*, 18 FCC Rcd 4860 (EB 2003) cancelling \$12,000 forfeiture for tower registration and painting issues); *Flambo Broadcasting, Inc.*, 15 FCC Rcd 23429 (2000) (rescinding proposed forfeiture for broadcast of indecent material); and *Americom Las Vegas Ltd. Partnership*, 15 FCC Rcd 13550 (2000) (rescinding proposed forfeitures of \$111,250 for broadcasting indecent material).

¹³ See, e.g., *Vista Point Communications, Inc.*, 14 FCC Rcd 140 (MB 1999); *First Media of Monterey, Inc.*, 7 FCC Rcd 4589 (MB 1992).

¹⁴ 47 C.F.R. § 1.80(i).

¹⁵ *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

undertaken by the licensee, excuse or nullify a licensee's rule violation.¹⁶

11. Based on the information before us, having examined it according to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*, we find that no reduction of the proposed \$8,000 forfeiture is warranted.

IV. ORDERING CLAUSES

12. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Broadcast Entertainment Corporation, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$8,000 for willfully and repeatedly violating Section 73.3526 of the Rules.¹⁷

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁸ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.¹⁹

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Broadcast Entertainment Corporation, at its address of record, and Brendan Holland, Esquire, Davis Wright Tremaine, LLP, its counsel of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

¹⁶ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)).

¹⁷ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.3526.

¹⁸ 47 U.S.C. § 504(a).

¹⁹ See 47 C.F.R. § 1.1914.